

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MILLENNIUM DRILLING CO., INC.,

Plaintiff,

v.

BEVERLY HOUSE-MEYERS  
RECOVABLE TRUST, et al.,

Defendants.

Case No. 2:12-cv-00462-MMD-CWH

ORDER

**I. SUMMARY**

Before the Court is Defendant Schain Leifer Guralnick's ("SLG") First Amended Motion to Dismiss Under Fed. R. Civ. P. 12(b)(2) for Lack of Personal Jurisdiction (2:13-cv-78, dkt. no. 120) and Third-Party Defendants Montcalm Co., LLC ("Montcalm") and Matthew Barnes' ("Barnes") Amended Motion to Dismiss the Third-Party Complaint for Lack of Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2) (dkt. no. 81). For the reasons set forth below, both SLG's and Barnes and Montcalm's Motion to Dismiss are granted.

**II. BACKGROUND**

**A. Facts**

Plaintiff Millennium Drilling Co, Inc. ("Millennium") seeks payment related to Defendants' investments in certain oil and gas companies. Millennium alleges that Defendants Beverly House-Meyers Revocable Trust, Grace Mae Properties, LLC, Molly Hamrick, Robert Hamrick, Hamrick Trust, and Beverly House-Meyers acquired working interests in oil and gas investments and became general partners in the Falcon, Colt, and Lion drilling partnerships (collectively, the "drilling partnerships"). These partnerships

1 were engaged in oil and gas exploration. Defendants allegedly invested in the drilling  
2 partnerships with cash contributions as well as subscription note, security, and pledge  
3 agreements (the "notes").<sup>1</sup> The notes included language allowing the notes to be  
4 assigned by the drilling partnerships to Millennium.

5 Through their managing partner and Third-Party Defendant Montcalm, the drilling  
6 partnerships acquired interests in portions of portfolios of oil and gas leases and lands  
7 assembled by Third-Party Defendant Patriot Exploration. The drilling partnerships then  
8 contracted with Millennium for the drilling of the related wells. For example, Falcon  
9 Drilling Partnership executed an agreement with Millennium in which Falcon pledged all  
10 of its partners' subscription notes to Millennium as security for Falcon's future payment  
11 obligations. Millennium later claimed that Falcon had defaulted according to the terms of  
12 the agreement and that Defendants owed the capital contributions that they had pledged  
13 as security.

#### 14 **B. Procedural History**

15 On March 19, 2012, Millennium filed a complaint against Defendants in the  
16 District of Nevada. The complaint alleged breach of contract, unjust enrichment, and  
17 breach of the duty of good faith and fair dealing. Defendants raised as affirmative  
18 defenses that (1) Millennium had committed fraud with respect to the contract; and (2)  
19 the contract was unconscionable and illegal. With leave of the Court, Millennium filed its  
20 First Amended Complaint ("FAC") on November 26, 2012.

21 On June 6, 2012, Molly Hamrick, Beverly House-Myers, and R&M Hamrick Family  
22 Trust filed a complaint against Patriot Exploration, Montcalm, Matthew Barnes, and SLG,  
23 among others, but not including Millennium, in Texas state court based on the same  
24 underlying transactions giving rise to Millennium's lawsuit. Patriot Exploration removed  
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26 <sup>1</sup>Third Party Defendants Robert and Elizabeth Holt acted as Defendants' financial  
27 advisors from 2003 to 2008. The Holts allegedly introduced Defendants to Feldman in  
28 2004 and informed Defendants about the investment opportunity in the drilling  
partnerships. Third party claims against the Holts were recently dismissed pursuant to  
the parties' stipulation. (Dkt. no. 170.)

1 the case to the Southern District of Texas. Hamrick, Beverly House-Myers, and R&M  
2 Hamrick Family Trust allege (1) breach of fiduciary duty; (2) fraud/fraud in the  
3 inducement; (3) fraudulent nondisclosure; (4) negligent misrepresentation; (5) breach of  
4 contract; (6) imposition of constructive trust; and (7) conspiracy.

5 On January 15, 2013, Hon. Melinda Harmon, United States District Judge for the  
6 Southern District of Texas, granted Patriot Exploration's Motion to Transfer Venue,  
7 determining that the Nevada and Texas actions involved substantially similar issues.  
8 (Dkt. no. 67 at 6.) The case was designated as 2:13-cv-78.

9 On May 6, 2013, this Court consolidated the two related cases into the first-filed  
10 Nevada action. (Dkt. no. 79). The plaintiffs in 2:13-cv-78 were designated as Third Party  
11 Plaintiffs in the instant case and the defendants in 2:13-cv-78 were designated as Third  
12 Party Defendants. (*Id.*)

13 On May 16, 2013, the Court denied Defendants' first motion to dismiss, asking  
14 that this action be dismissed in favor of the second-filed Texas action, as moot given the  
15 Court's decision to consolidate the cases. (Dkt. no. 80.)

16 The Court now addresses Third-Party Defendants Montcalm and Barnes'  
17 Amended Motion to Dismiss the Third Party Complaint for Lack of Personal Jurisdiction  
18 (dkt. no. 81), filed on May 23, 2013, and Third-Party Defendant SLG's First Amended  
19 Motion to Dismiss for Lack of Personal Jurisdiction (2:13-cv-78, dkt. no. 120), filed on  
20 April 9, 2013. The Court granted several requests for extensions of time regarding the  
21 briefing of the instant motions in order to allow the parties an opportunity to conduct  
22 jurisdictional discovery. Oral argument occurred on February 5, 2014. (See dkt. no. 168.)

23 The day before oral argument, Third-Party Plaintiffs filed a proposed first  
24 amended complaint.<sup>2</sup> (Dkt. no. 166.) Third-Party Plaintiffs were not able to amend as a  
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26 <sup>2</sup>The Court notes that while Third-Party Defendants argued in their Motions, both  
27 filed in spring 2013, that Third-Party Plaintiffs' Complaint was not sufficient to establish  
28 jurisdiction, Third-Party Plaintiffs waited until the day before oral argument to file a  
proposed amended complaint.

1 matter of course, pursuant to Federal Rule of Civil Procedure 15(a)(1), and were  
2 therefore required to either obtain the opposing party's written consent prior to amending  
3 or seek leave of the Court, neither of which they sought. See Fed. R. Civ. P. 15(a)(2).  
4 While the proposed amended complaint is not properly before this Court, the parties  
5 referenced it in oral argument and the Court incorporates a discussion of it in order to  
6 note that it does not cure the Complaint's jurisdictional deficiencies.<sup>3</sup>

### 7 **III. LEGAL STANDARD**

8 In opposing a defendant's motion to dismiss for lack of personal jurisdiction, a  
9 plaintiff bears the burden of establishing that jurisdiction is proper. *Boschetto v. Hansin*,  
10 539 F.3d 1011, 1015 (9th Cir. 2008). Where, as here, defendants' motions are based on  
11 written materials rather than an evidentiary hearing, "the plaintiff need only make a prima  
12 facie showing of jurisdictional facts to withstand the motion to dismiss." *Brayton Purcell*  
13 *LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010) (internal quotation  
14 marks omitted). The plaintiff cannot "simply rest on the bare allegations of its complaint,"  
15 but uncontroverted allegations in the complaint must be taken as true. *Schwarzenegger*  
16 *v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (quoting *Amba Mktg. Sys.,*  
17 *Inc. v. Jobar Int'l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)). The court "may not assume  
18 the truth of allegations in a pleading which are contradicted by affidavit," *Data Disc, Inc.*  
19 *v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977), but it may resolve  
20 factual disputes in the plaintiff's favor, *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154  
21 (9th Cir. 2006).

### 22 **IV. DISCUSSION**

23 A two-part analysis governs whether a court retains personal jurisdiction over a  
24 nonresident defendant. "First, the exercise of jurisdiction must satisfy the requirements of  
25 the applicable state long-arm statute." *Chan v. Society Expeditions*, 39 F.3d 1398, 1404

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27 <sup>3</sup>The Court further notes that Third-Party Plaintiffs moved for leave to file a  
28 second amended complaint over a week after oral argument on February 14, 2014. (Dkt.  
no. 171.) As the Motion is not ripe, the Court does not consider it in this Order.

1 (9th Cir. 1994). Since “Nevada’s long-arm statute, NRS § 14.065, reaches the limits of  
2 due process set by the United States Constitution,” the Court moves on to the second  
3 part of the analysis. See *Baker v. Eighth Judicial District Court ex rel. Cnty. of Clark*, 999  
4 P.2d 1020, 1023 (Nev. 2000). “Second, the exercise of jurisdiction must comport with  
5 federal due process.” *Chan*, 39 F.3d at 1404–05. “Due process requires that nonresident  
6 defendants have certain minimum contacts with the forum state so that the exercise of  
7 jurisdiction does not offend traditional notions of fair play and substantial justice.” *Id.*  
8 (citing *Int’l Shoe v. Washington*, 326 U.S. 310, 316 (1945)). Courts analyze this  
9 constitutional question with reference to two forms of jurisdiction: general and specific  
10 jurisdiction. The Third-Party Plaintiffs have only claimed to have specific jurisdiction over  
11 Third-Party Defendants SLG and Montcalm and Barnes.

12 Specific jurisdiction exists where “[a] nonresident defendant’s discrete, isolated  
13 contacts with the forum support jurisdiction on a cause of action arising directly out of its  
14 forum contacts.” *CollegeSource, Inc.*, 653 F.3d at 1075. Courts use a three-prong test  
15 to determine whether specific jurisdiction exists over a particular cause of action:  
16 “(1) The non-resident defendant must purposefully direct his activities or consummate  
17 some transaction with the forum or resident thereof; or perform some act by which he  
18 purposefully avails himself of the privilege of conducting activities in the forum, thereby  
19 invoking the benefits and protections of its laws; (2) the claim must be one which arises  
20 out of or relates to the defendant’s forum-related activities; and (3) the exercise of  
21 jurisdiction must comport with fair play and substantial justice, i.e., it must be  
22 reasonable.” *Id.* at 1076 (quoting *Schwarzenegger*, 374 F.3d at 802)). The party  
23 asserting jurisdiction bears the burden of satisfying the first two prongs. *CollegeSource,*  
24 *Inc.*, 653 F.3d at 1076 (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)). If it  
25 does so, the burden shifts to the party challenging jurisdiction to set forth a “compelling  
26 case” that the exercise of jurisdiction would be unreasonable. *CollegeSource, Inc.*, 653  
27 F.3d at 1076 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)).

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1           **A.     SLG**

2           SLG is a certified public accounting firm in New York City. (See dkt. no. 122 at 3.)  
3           SLG argues that its work in this matter is limited to the preparation of tax returns and  
4           financial statements for Defendant Patriot. (2:13-cv-78, dkt. no. 120 at 6–7.) SLG states  
5           that its only communication regarding the preparation of these documents was with  
6           Jonathan Feldman, the owner of Patriot, his assistant Marion John, and Matthew  
7           Barnes, all of whom were located in Massachusetts or Connecticut. (See *id.* at 7.) As a  
8           result, “no member of SLG ever had communications of any kind with anyone in  
9           Nevada.” (*Id.* at 6.)

10          Third-Party Plaintiffs allege that SLG sent K-1s pertaining to the oil and gas  
11          partnerships at issue in this case to Third-Party Plaintiff R&M Hamrick Family Trust in  
12          Nevada from 2004 to 2012. (Dkt. no. 122 at 3.) Third-Party Plaintiffs further state that  
13          “SLG also sent K-1s, at various times and in various years to at least 7 other partners in  
14          the Colt, Lion or Falcon drilling partnerships that reside or did reside in Nevada, most of  
15          whom are parties to this lawsuit.” (*Id.* at 4.) While not raised in Third-Party Plaintiffs’  
16          Complaint, or proposed amended complaint (see hr’g tr. at 20–22), in oral argument  
17          Third-Party Plaintiffs argued that the K-1s were inaccurate.<sup>4</sup> Specifically, they claimed  
18          that SLG misrepresented what the intangible drilling costs were that could be deducted.  
19          (See *id.* at 22.) In addition to its role in sending the K-1’s, Third-Party Plaintiffs allege that  
20          SLG “prepared the audited return on investment that was included in the promotional  
21          materials that were given to Plaintiffs.” (*Id.* at 8.)

22          SLG concedes that K-1s were sent to the R&M Hamrick Family Trust, but  
23          explains that this mailing does not constitute purposeful direction as it was simply done

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25          <sup>4</sup>Prior to oral argument, the only suggestion that the K-1s were inaccurate is made  
26          by Third-Party Plaintiffs in a single sentence in their Response to SLG’s Motion to  
27          Dismiss. (See dkt. no. 122 at 3 (“In the course of its conduct, moreover, SLG repeatedly  
28          mailed misleading financial information regarding the fraudulent transactions to Third-  
        Party Plaintiff R&M Hamrick Family Trust in Nevada, namely K-1s pertaining to the oil  
        and gas partnerships at issue in this proceeding.”).)

1 as a courtesy to its clients. (See dkt. no. 135 at 5.) SLG states that the partnerships  
2 collectively have hundreds of investors in virtually every state and that the maximum  
3 number of investors in Nevada at any one time was eight. (See *id.* at 4.) None of the  
4 Nevada investors were ever clients of SLG in their role as investors. (See *id.* at 5.)  
5 Indeed, even if the mailing did constitute purposeful direction, there is no dispute that the  
6 K-1s were only sent to those who had already invested. As a result, no claim in the case  
7 can arise under the mailing of K-1s. Regarding the audited returns on investment  
8 (“audited returns”), SLG argues that they were produced for internal purposes only and  
9 that Third-Party Plaintiffs have failed to allege any facts connecting the creation of the  
10 audited returns on investment to either activity in Nevada or a claim in the case. (See *id.*  
11 at 4; see also hr’g tr. at 35–37.)

#### 12 1. Purposeful Direction

13 “The first prong of the specific jurisdiction test refers to both purposeful avilment  
14 and purposeful direction.” *CollegeSource, Inc.*, 653 F.3d at 1076. Cases involving  
15 tortious conduct are analyzed under the rubric of purposeful direction. *Id.* (citing  
16 *Schwarzenegger*, 374 F.3d at 802). In tort cases, the Ninth Circuit asks whether a  
17 defendant “purposefully directs” her activities at the forum state and applying an “effects”  
18 test that looks to where the defendant’s actions were felt, rather than on where the  
19 actions occurred. *Yahoo! Inc. v. La Ligue Contre Le Racism Et L’Antisemitisme*, 433  
20 F.3d 1199, 1206 (9th Cir. 2006) (en banc) (quoting *Schwarzenegger*, 374 F.3d at 803.).  
21 In contract cases, a court inquires into whether the defendant “purposefully avails itself  
22 of the privilege of conducting activities or consummates a transaction in the forum,  
23 focusing on activities such as delivering goods or executing a contract.” *Id.* (quoting  
24 *Shwarzenegger*, 374 F.3d at 802). The “effects test” requires that “the defendant  
25 allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum  
26 state, (3) causing harm that the defendant knows is likely to be suffered in the forum  
27 state.” *Yahoo! Inc.*, 433 F.3d at 1206 (quoting *id.* at 803).

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1                   **a.     K-1s**

2           SLG's only direct contact with Nevada is limited to its courtesy mailing of K-1s to  
3   partnership investors in Nevada. Third-Party Plaintiffs have not, however, demonstrated  
4   that this act caused harm that the defendant knew would be likely suffered in the forum  
5   state.<sup>5</sup> While Third-Party Plaintiffs raised allegations in oral argument concerning  
6   the accuracy of the K-1s, neither the Complaint nor the improperly filed proposed first  
7   amended complaint contains allegations that the K-1s contained false information or that  
8   SLG knew or should have known that they included false information. (See hr'g tr. at 20-  
9   22.) Third-Party Plaintiffs have not, therefore, made any allegations that connect the  
10   alleged fraudulent scheme at issue in the lawsuit with SLG's conduct aimed at Nevada.  
11   As a result, the Court cannot find that SLG's sending of K-1s to investors in Nevada  
12   constitutes purposeful direction.

13                   **b.     Independent Accountant's Report**

14           Third-Party Plaintiffs also assert that SLG prepared the audited returns and that  
15   SLG knew or should have known that Feldman would use these audited returns in the  
16   promotional materials used to induce Plaintiffs to invest in the partnerships. (See dkt. no.  
17   122 at 8.) Third-Party Plaintiffs have failed to demonstrate that the preparation of these  
18   forms establish purposeful direction.

19           First, Third-Party Plaintiffs fail to point to any reason why SLG knew or should  
20   have known that the audited returns would be used to induce investment in the  
21   partnerships. SLG argues, and the audited returns themselves indicate, that the audited

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25           <sup>5</sup>The Court declines to consider whether the sending of K-1s constitutes an act  
26   that is expressly aimed at Nevada as Third-Party Plaintiffs have failed to establish that  
27   SLG knew or was likely to know that harm would be suffered in Nevada. The Court  
28   notes, however, that the parties agree that the maximum number of Nevada investors in  
any one year was eight, and more likely six, while the approximately 310 other investors  
were distributed across the country. (See hr'g tr. at 11-12, 47.)



1 returns are for internal use only.<sup>6</sup> Second, Third-Party Plaintiffs allege no facts  
2 suggesting that even if SLG knew that the audited returns would be used to induce  
3 investment, that they knew such solicitation would be likely to occur in Nevada.

4 Finally, even if Third-Party Plaintiffs can demonstrate that SLG knew the audited  
5 returns would be used to solicit investment in Nevada, they would need to address the  
6 timing of the Third-Party Plaintiffs' investment in relation to the date the audited returns  
7 were prepared. Howard Schain indicated in his deposition that while audited returns  
8 were prepared for a number of years, the first one was prepared in 2006. (See dkt. no.  
9 122-1 at 22.) The audited return that Third-Party Plaintiffs attached to their proposed first  
10 amended complaint is dated April 24, 2006. (See dkt. no. 166, Ex. A.) During oral  
11 argument, SLG explained that there are three partnerships that Third-Party Plaintiffs  
12 invested in: (1) Colt, which they invested in during 2004; (2) Falcon, which they invested  
13 in during 2005; and (3) Lyon, which only Hamrick Trust invested in during 2006. (See  
14 hr'g tr. at 35.) It appears, therefore, that the timing would preclude the audited return  
15 from being used to induce investment in any of the partnerships except for potentially  
16 Hamrick Trust's investment in Lyon. Regarding the investment in Lyon, Third-Party  
17 Plaintiffs allege no facts suggesting that Hamrick Trust was in fact given a copy of the  
18 return.

19 The Court therefore finds that Third-Party Plaintiffs have not established that SLG  
20 purposely directed its activities to Nevada.

## 21 2. Arising out of Forum-Related Activities

22 Given the discrepancies between the arguments Third-Party Plaintiffs raised in  
23 their briefs and those argued at the hearing regarding the K-1s, the Court notes that  
24 even if it were to find that the purposeful direction prong of the specific jurisdiction test  
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26 <sup>6</sup>At the hearing, Third-Party Plaintiffs argued for the first time that one of the  
27 opinions listed on the audited returns appears to be directed at investors, suggesting  
28 that SLG knew or intended for this document to be distributed to investors. (See hr'g tr.  
at 27-28.) Third-Party Plaintiffs include no such allegation in the Complaint or in their  
Response to SLG's Motion to Dismiss.

1 has been met, the Court cannot find that the claims at issue in the case arise out of the  
2 mailings of the K-1s or the alleged misleading information in the K-1s. Third-Party  
3 Plaintiffs argue that the act of sending K-1s to Nevada investors supports jurisdiction in  
4 this case because "SLG conspired with the Defendants to dupe the Nevada-resident  
5 Plaintiffs into making and remaining invested in the drilling and tax investments at issue,  
6 knowing full well that the Plaintiffs would rely upon SLG's misrepresentations and  
7 omissions in entering into and remaining in the fraudulent investments, and knowing full  
8 well that the Plaintiffs were Nevada residents and would suffer damages in Nevada."  
9 (Dkt. no. 122 at 7.) SLG states, however, that it mailed the K-1s to Nevada investors  
10 after they had already invested in the partnership and, therefore, could not have served  
11 as an inducement. SLG also claims that it had no awareness of the purported scheme  
12 and what effects it would have in Nevada. (See dkt. no. 135 at 8.)

13 The Court agrees with SLG that the K-1s could not have been used to induce  
14 investment given that they were only sent to those who had already invested. While  
15 Third-Party Plaintiffs argued during the hearing that remaining in the investment is a  
16 claim in the case, the Court finds that remaining in the investment is not itself a claim,  
17 but simply relates to damages. Sending the K-1s and providing allegedly misleading  
18 information in the K-1s, therefore, are not acts that a claim in the case can arise out of.

19 The Court therefore need not reach the reasonableness prong of the specific  
20 jurisdiction test and finds that Third-Party Plaintiffs lack jurisdiction in Nevada over SLG.

21 **B. Barnes & Montcalm**

22 Matthew Barnes is the Managing member of Third-Party Defendant Montcalm.  
23 (See dkt. no. 131 at 3.) Montcalm, located in Massachusetts, is the Managing General  
24 Partner of a series of oil and gas partnerships, including Colt, Lion, and Falcon Drilling  
25 Partnerships. (See *id.*) Third-Party Plaintiffs allege that: (1) they completed documents in  
26 Nevada in order to become part of the Colt, Lion, and Falcon Drilling Partnerships;  
27 (2) they sent those documents from Nevada to Barnes and Montcalm; and (3) Barnes  
28 and Montcalm approved their admission into the Partnerships and countersigned the

1 documents. (*See id.* at 6.) Third-Party Plaintiffs further allege that Barnes and Montcalm  
2 repeatedly reviewed, approved, and authorized misleading financial information  
3 regarding the fraudulent transactions, namely K-1s, and authorized SLG to mail the K-1s  
4 to investors in Nevada. (*See id.*)

5 **1. Purposeful Direction**

6 Third-Party Plaintiffs do not appear to allege any facts showing that Barnes and  
7 Montcalm purposefully availed themselves of the privilege of conducting activities in  
8 Nevada. Instead, they argue that there was purposeful direction because Barnes and  
9 Montcalm engaged in an intentional tort specifically directed to the Third-Party Plaintiffs  
10 in Nevada. (*See* dkt. no. 131 at 14.) Specifically, they argue that “Barnes and Montcalm  
11 knew that the Third-Party Plaintiffs were based in Nevada, and that the ill effects of the  
12 fraudulent tax scheme would be felt in Nevada.” (*Id.* at 16.) As a result, Third-Party  
13 Plaintiffs allege that Barnes and Montcalm committed an intentional tort that was  
14 knowingly directed into the forum state. (*See id.* at 17.) Barnes and Montcalm argue that  
15 even taking all of Third-Party Plaintiffs’ allegations as true, they have not alleged any  
16 facts that establish purposeful direction as applied by the Ninth Circuit.

17 The Court agrees with Barnes and Montcalm that Third-Party Plaintiffs have failed  
18 to allege any facts showing that they purposefully directed their activities toward Nevada  
19 or purposefully availed themselves of conducting activities in Nevada. Neither the  
20 Complaint nor the proposed amended complaint alleges any facts connecting Barnes  
21 and Montcalm to Nevada. Instead, the Complaint includes general allegations  
22 concerning the role of Barnes and Montcalm in the fraudulent scheme. In their Response  
23 to the Motion to Dismiss, Third-Party Plaintiffs allege that Barnes and Montcalm  
24 reviewed the partnership agreements of Nevada investors and reviewed and approved

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1 the K-1s that they authorized SLG to send to investors.<sup>7</sup> (*See id.* at 6–7.)

2 As the Ninth Circuit has made clear in its application of the effects test, an act with  
3 foreseeable effects in the forum is not sufficient; there must be “something more” —  
4 namely, “express aiming” at the forum state. *Bancroft & Masters, Inc. v. Augusta Nat’l*  
5 *Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000); *see also Liberty Media Holdings, LLC v.*  
6 *Letyagin*, 925 F. Supp. 2d 1114, 1118 (D. Nev. 2013). The Complaint’s general  
7 allegations regarding Barnes and Montcalm’s involvement in the fraudulent scheme are  
8 therefore not adequate to establish jurisdiction. Even if it were foreseeable that harm  
9 would be caused in Nevada, Third-Party Plaintiffs still need to demonstrate that the  
10 alleged fraudulent acts of Barnes and Montcalm were expressly aimed at Nevada. *Love*  
11 *v. Assoc. Newspapers, Ltd.*, 611 F.3d 601, 609 (9th Cir. 2010) (“Where defendant’s  
12 ‘express aim was local,’ the fact that it caused harm to the plaintiff in the forum state,  
13 even if the defendant knew that the plaintiff lived in the forum state, is insufficient to  
14 satisfy the effects test.”) (*quoting Schwarzenegger*, 374 F.3d at 807).

15 The ministerial acts described by Third-Party Plaintiffs regarding Barnes and  
16 Montcalm’s contact with Nevada are likewise inadequate. Sending partnership  
17 agreements to Nevada investors, where there is no allegation that Barnes and Montcalm  
18 had solicited Nevada business, does not constitute purposeful direction. *See Hunt v.*  
19 *Erie Ins. Group*, 728 F.2d 1244, 1248 (9th Cir. 1984) (finding that mere communication  
20 with defendant in the forum state does not satisfy minimum contacts). Likewise, the act  
21 of approving the K-1s and directing SLG to send them to all investors, does not satisfy  
22 purposeful direction.

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26 <sup>7</sup>Third-Party Plaintiffs also make a passing reference to the Cash Calls references  
27 in Plaintiffs’ Original Petition and state that they were invoiced by Montcalm and Barnes.  
28 (See dkt. no. 131 at 6.) As they do not explain the relevancy of this allegation to  
jurisdiction, the Court does not consider it here.

1                   **2.     Arising Out of Forum-Related Activities**

2           As Third-Party Plaintiffs have not established that Barnes and Montcalm  
3 purposefully directed their activities to Nevada, the Court need not consider whether the  
4 claims arise out of or relate to Montcalm and Barnes' forum-related activities. As with  
5 SLG, the Court notes that even if it were to find that the purposeful direction prong of the  
6 specific jurisdiction test has been met, the Court cannot find that the claims at issue in  
7 the case arise out of the forum-related activities.

8           First, Barnes and Montcalm's role in authorizing SLG to send the K-1s to  
9 investors would fail to satisfy prong two of the personal jurisdiction test for the same  
10 reasons that SLG's act of sending the K-1s would fail. Because SLG was only authorized  
11 to send K-1s to investors, it is impossible that the K-1s induced individuals to invest and,  
12 as discussed in Section IV.2., *supra*, remaining in the investment is not a claim in this  
13 case.

14           Second, no claim arises out of Barnes and Montcalm's involvement in the  
15 administrative process of approving the partnership agreements of Nevada investors.

16           The Court therefore finds that Third-Party Plaintiffs have not established  
17 jurisdiction over Barnes and Montcalm in Nevada.

18           **V.     CONCLUSION**

19           The Court notes that the parties made several arguments and cited to several  
20 cases not discussed above. The Court has reviewed these arguments and cases and  
21 determines that they do not warrant discussion as they do not affect the outcome of the  
22 Motion.

23           It is therefore ordered that Defendant Schain Leifer Guralnick's ("SLG") First  
24 Amended Motion to Dismiss Under Fed. R. Civ. P. 12(b)(2) for Lack of Personal  
25 Jurisdiction (2:13-cv-78, dkt. no. 120) is granted.

26           It is further ordered that Third-Party Defendants Montcalm Co., LLC ("Montcalm")  
27 and Matthew Barnes' Amended Motion to Dismiss the Third-Party Complaint for Lack of  
28 Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2) (dkt. no. 81) is granted.

1 All Third-Party Plaintiffs' claims against SLG, Montcalm, and Barnes are therefore  
2 dismissed.

3 DATED THIS 25<sup>th</sup> day of February 2014.

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6 MIRANDA M. DU  
7 UNITED STATES DISTRICT JUDGE  
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